

Opinion NS-4877—May 5, 1943.

SUBJECT: CHIROPRACTIC BOARD OF EXAMINERS MAY NOT LEVY ANY FEE OTHER THAN THOSE AUTHORIZED BY THE LEGISLATURE.

PREPARED FOR: BOARD OF CHIROPRACTIC EXAMINERS, SACRAMENTO.

PREPARED BY: ALLEN L. MARTIN, DEPUTY ATTORNEY GENERAL. (S. F.)

ROBERT W. KENNY, ATT. GEN.

446

ATTORNEY GENERAL'S OPINIONS

[VOL. 1]

I have before me your letter of recent date in which you state that you have adopted a rule by which a charge is assessed against any licentiate of your board upon application for a duplicate license, or for an endorsement on the original license, regarding change of name of the licentiate. You ask if you are authorized by law to assess such a fee.

The general rule applicable to all statutory boards is that they possess and may exercise only such powers as have been conferred upon them by the legislature, unless additional or extraordinary powers have been conferred by the constitution. The power to charge a special fee for the services referred to above does not appear in the constitution, and I find no specific authority conferred upon you by statute to make such charge. Section 5 of the Chiropractic Act provides for a fee of \$25.00 which must be paid by any applicant before permission to take the examination is granted, but I find no other reference in the Act concerning the payment of any fees.

It is fundamental that no fee shall be charged by the government or governmental authority for service, except the fee be fixed by competent authority, and in our State the authority which has the power to fix and establish fees for governmental work or service is our legislature. I do not question the fact that the fees proposed to be charged may have as its purpose the desire to cover the administrative expenses involved. Nevertheless, irrespective of the motive which has prompted the passage of the enactment of this rule of the Board, I can find no authority in law permitting such charge to be made.

It may be contended that, in view of the provisions of section 4 of the Chiropractic Act, which, among other things, empowers the Board "to adopt from time to time such rules and regulations as the Board may deem proper and necessary for the performance of this work", authority thereby is vested in the Board to enact such a rule and assess such fees.

However, in considering the validity of rules and regulations adopted by administrative agencies such as the Board of Chiropractic Examiners, certain legal principles must be borne in mind. One of them to be considered here is that the rules and regulations may not extend the statute pursuant to which the said rules and regulations are adopted.

Campbell v. Galeno Chemical Co., 281 U. S. 599.

Since the legislature has provided for an initial fee to be paid by the applicant for examination, and has remained silent respecting any other special fees, I am of the opinion that the rule adopted by you does in fact extend the provisions of the Chiropractic Act.

In view of the foregoing principles of law, it is my opinion that the rule referred to in your letter is invalid.